

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES

VS.

NICHELE HENSON

 * 400,000,000 *
 *

**MOTION TO DISMISS INDICTMENT FOR GOVERNMENT MISCONDUCT,
LACK OF PROBABLE CAUSE, AND CONSTITUTIONAL VIOLATIONS**

COMES NOW, the Defendant, Nichelle Henson, appearing **pro se**, and respectfully moves this Honorable Court to dismiss the indictment in this matter **with prejudice** pursuant to **Rule 12(b)(3)(B)** of the Federal Rules of Criminal Procedure. The Defendant submits that the government's investigative conduct violated the **Fourth, Fifth, and Sixth Amendments** of the United States Constitution, rendering the indictment fatally defective and depriving this Court of jurisdiction. The prosecution's reliance on unconstitutional searches and seizures, improper ex parte communications, and a lack of probable cause constitutes an abuse of government discretion that mandates dismissal of all charges.

Additionally, the Defendant renews prior arguments raised in the initial motion to dismiss in light of newly discovered evidence that was unavailable at the time of the previous hearing. This newly acquired evidence—government letters, ex parte applications, and reports from the **FBI and law enforcement**—demonstrates that the government **abused its authority, violated**

due process, and circumvented judicial oversight to unlawfully obtain records related to the Defendant's business dealings. **[THESE EXHIBITS WILL BE FILED UNDER SEAL IN A SEPARATE FILING, AS THEY ARE ARGUABLY COVERED BY THE COURT'S PROTECTIVE ORDER]**

GROUND FOR DISMISSAL:

1. **Violation of the Fourth Amendment – Unlawful Search and Seizure**
2. **Fishing Expedition – Lack of Probable Cause for Investigation**
3. **Improper Ex Parte Requests – Deprivation of Due Process**
4. **Misleading the Grand Jury – Presentation of Illegally Obtained Evidence**
5. **Renewal of Prior Arguments in Light of Newly Discovered Evidence**
6. **Defective Indictment – Lack of Jurisdiction Due to Unconstitutional Investigative Tactics**
7. **False Statements and Fraudulent Conduct by the Government**

I. BACKGROUND FACTS

The Defendant has been charged with **bank fraud and making false statements** under federal statutes in connection with the receipt of COVID-19 relief funds. The investigation into the Defendant's conduct was triggered **solely** by a **Suspicious Activity Report (SAR)** filed by the Defendant's bank regarding a **\$5,000 withdrawal** from her business account.

Despite the SAR's **lack of specific allegations of fraud**, the government launched an expansive probe into the Defendant's businesses, **without probable cause or a warrant**,

seeking financial records and business loan applications **without judicial oversight**. This unlawful conduct demonstrates a blatant disregard for the constitutional protections afforded under the **Fourth Amendment**.

II. LEGAL ARGUMENTS

A. The Government's Actions Violated the Fourth Amendment – Unlawful Search and Seizure

The Fourth Amendment prohibits unreasonable searches and seizures. The government's conduct in this case is unconstitutional for several reasons:

1. Lack of a Warrant or Probable Cause:

- The **SAR alone** does not establish probable cause for an investigation. The **government lacked any substantive evidence** to justify its intrusive probe into the Defendant's finances.
- The government's actions are inconsistent with **Terry v. Ohio, 392 U.S. 1 (1968)**, which establishes that mere suspicion is insufficient to justify government intrusion into a citizen's private affairs.

2. Improper Requests to the SBA:

- Without a warrant or legitimate justification, the government requested the Defendant's **entire SBA loan history**, effectively conducting a warrantless search.

- The Defendant contends that **loan application records are protected business documents**, and accessing them without proper authorization constitutes an **unconstitutional seizure of records**.

B. The Government's Investigation Was an Improper Fishing Expedition

The Defendant asserts that the investigation constitutes an unlawful **fishing expedition**, meaning the government conducted a broad, speculative inquiry **without any specific evidence of wrongdoing**:

- **The SAR flagged a lawful transaction with no indication of criminality**, yet the government **expanded its probe into all of the Defendant's financial dealings**.
- The government's conduct mirrors cases where courts have found **"general rummaging" through financial records unconstitutional**.
- The lack of specific, articulable suspicion supporting the probe **renders the indictment unconstitutional**.

C. False Statements and Fraud Committed by the Government

The government has not only accused the Defendant of making false statements but has itself engaged in **false and misleading statements** to further its investigation and seize the Defendant's assets. The following actions constitute government fraud and misconduct:

- **The government misrepresented its case to financial institutions**, falsely suggesting that the Defendant had already been found guilty, which resulted in the bank unlawfully seizing her assets.

- **The government provided false and misleading information to the grand jury,** improperly influencing the decision to indict by presenting speculative and unconstitutional evidence.
- **The government falsely claimed that there was probable cause for a broad investigation,** despite basing the entirety of their inquiry on a routine SAR that contained no evidence of fraud.
- **The government improperly characterized legally authorized financial transactions as fraudulent,** misleading financial institutions and misrepresenting facts to the court.
- **Law enforcement reports and ex parte applications contradict each other,** demonstrating an attempt to build a case around speculation rather than concrete evidence.
- **The prosecution falsely implied that the Defendant knowingly provided fraudulent information on loan applications,** despite evidence showing that she followed ambiguous guidelines in good faith.

These false statements not only undermine the credibility of the prosecution but also amount to **the same fraudulent conduct they are accusing the Defendant of committing**. This conduct is in direct violation of **the Due Process Clause of the Fifth Amendment** and further justifies dismissal of the indictment.

D. The Indictment is Defective and the Court Lacks Jurisdiction

A valid indictment **cannot be based on unconstitutional investigative tactics**. Here, the prosecution's failure to adhere to constitutional protections invalidates the charges. Courts have

consistently ruled that indictments based on **evidence obtained in violation of constitutional rights are subject to dismissal.**

Thus, the indictment against the Defendant is defective, and this Court **lacks jurisdiction** to proceed.

III. RESERVATION OF RIGHTS TO ADD ADDITIONAL ARGUMENTS AND EVIDENCE

The Defendant expressly reserves the right to supplement this motion with additional legal arguments and supporting evidence as they become available. Due to the government's ongoing misconduct and lack of transparency, new evidence may surface that further establishes the unconstitutional nature of the investigation and prosecution. If additional material supporting dismissal arises, the Defendant will submit further filings to ensure that all violations of constitutional rights are fully addressed before this Honorable Court.

IV. RELIEF REQUESTED

For the foregoing reasons, the Defendant respectfully requests that this Honorable Court:

1. **Dismiss the indictment with prejudice** due to the unconstitutional search, due process violations, and improper investigative conduct;
2. **Suppress any evidence obtained through these unlawful actions**, including evidence presented to the grand jury;
3. **Find that the government's actions violated the Fourth, Fifth, and Sixth Amendments**, depriving the Defendant of fundamental rights;

4. **Declare the indictment defective**, thereby removing the Court's jurisdiction over the charges;
5. **Find that the government's failure to obtain a warrant, establish probable cause, or follow constitutional requirements** invalidates the entire investigation;
6. **Find that the government engaged in false statements and fraud by misrepresenting facts to the court, grand jury, and financial institutions;**
7. **Provide any other relief deemed appropriate** by this Court.

Respectfully submitted,

Nichelle Henson, Pro Se

AFFIDAVIT OF NICHELLE HENSON IN SUPPORT OF MOTION TO DISMISS

I, Nichelle Henson, being duly sworn, state under penalty of perjury as follows:

I. INTRODUCTION

1. I am the Defendant in the above-captioned matter, appearing **pro se** in this proceeding.
2. I submit this Affidavit in support of my **Motion to Dismiss the Indictment** against me, based on numerous constitutional violations, government misconduct, and improper investigative actions that have irreparably tainted the prosecution's case.
3. The statements contained herein are based on my personal knowledge, information, and belief.

II. FACTUAL BACKGROUND

4. The government's investigation against me began after my bank filed a **Suspicious Activity Report (SAR)** related to a **\$5,000 withdrawal** from my business account.
5. The SAR contained no evidence of criminal conduct, fraud, or illegality. It was a standard financial report that banks file routinely and **does not constitute probable cause** for an investigation.
6. Despite the **lack of probable cause**, the government initiated a broad and intrusive investigation into all of my financial and business dealings, which included:

- Submitting **ex parte applications** to seize my tax and financial records **without judicial oversight** or probable cause.
- Contacting the **Small Business Administration (SBA)** and unlawfully requesting my **loan applications and business records**.
- Misrepresenting my financial transactions as fraudulent, despite **no evidence of deceit or misrepresentation** in my loan applications.
- Pressuring **witnesses and business associates** to cooperate with their theory, despite there being no independent evidence of wrongdoing.

III. GOVERNMENT MISCONDUCT AND CONSTITUTIONAL VIOLATIONS

A. Fourth Amendment Violations – Unreasonable Search and Seizure

7. The government's request for my **entire loan application history and business tax records** was executed **without a warrant**, violating my Fourth Amendment rights.
8. The government failed to provide any evidence to justify a **probable cause finding**, yet they proceeded to access and review my personal and business records.
9. Courts have held that broad, **warrantless searches of private financial records** are unconstitutional and impermissible.

B. Fifth Amendment Due Process Violations

10. The government's **ex parte communications** with financial institutions and tax authorities deprived me of my **right to challenge** the subpoenas issued against my records.

11. Due process requires that a person be **notified of government actions** that affect their fundamental rights, yet the government failed to do so.

12. The government's failure to adhere to constitutional protections has **tainted the indictment**, making it unlawful.

C. Sixth Amendment Violations – Deprivation of the Right to a Fair Trial

13. The government engaged in **misleading and coercive tactics** to convince witnesses to testify against me.

14. They **intentionally misrepresented facts** before the grand jury, leading to an indictment based on **false premises**.

15. The government has **failed to disclose exculpatory evidence**, depriving me of my right to present a full and fair defense.

IV. FALSE STATEMENTS AND FRAUD COMMITTED BY THE GOVERNMENT

16. The government has falsely characterized my **lawful financial transactions** as fraudulent.

17. The government falsely represented to the **grand jury** that I had engaged in fraudulent conduct, despite clear evidence that my loan applications were **filed in good faith**.

18. The government falsely led financial institutions to believe that I had already been **convicted**, which resulted in my business funds being seized **without due process**.

19. The government engaged in **reckless disregard for the truth**, submitting **incomplete and misleading reports** in an effort to secure an indictment against me.

V. RENEWAL OF PRIOR ARGUMENTS BASED ON NEWLY DISCOVERED EVIDENCE

20. I previously filed a **motion to dismiss**, which was denied based on the court's finding that I had **insufficient evidence** to prove my constitutional claims at the time.

21. Since that ruling, I have obtained **new evidence** demonstrating that the government **acted improperly** and conducted a biased investigation against me.

22. This new evidence includes:

- **Government letters and reports** confirming that my financial records were obtained without proper legal authorization.
- **Ex parte applications** showing the government's intent to circumvent judicial review.
- **Statements from law enforcement officials** acknowledging that their case was built on **speculation rather than concrete evidence**.

23. This new evidence **fundamentally alters** the basis for dismissal and provides **conclusive proof** that the government's investigation was unconstitutional and improperly conducted.

VI. REQUESTED RELIEF

24. Based on the foregoing facts, I respectfully request that this Court:

- **Dismiss the indictment with prejudice** due to the **unconstitutional investigation and prosecutorial misconduct**.

- **Suppress any evidence** obtained through unconstitutional means, including evidence presented to the grand jury.
- **Declare the government's investigation unlawful** due to its violation of my Fourth, Fifth, and Sixth Amendment rights.
- **Provide any other relief** deemed just and proper under the circumstances.

VII. AFFIRMATION

25. I declare under **penalty of perjury** under the laws of the United States that the foregoing is **true and correct** to the best of my knowledge.

Nichelle Henson, Pro Se